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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 22nd May 2006

No. 3964—li/1(B)-160/1996-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th March 2006 in Industrial Dispute Case No. 93 of 1997 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of State Social Welfare Advisory Board, Orissa, A-64, Nayapalli, Bhubaneswar-751012 and its workman Miss Narmada Bastia, D/o Shri Markanda Bastia, Tinigharia, P. O. Nuabazar, Cuttack was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

#### IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 93 OF 1997

Dated the 30th March 2006

#### *Present :*

Shri P. K. Sahoo, O.S.J.S. (Jr. Branch)  
Presiding Officer, Labour Court  
Bhubaneswar.

#### *Between :*

The Management of      ..      First Party—Management  
State Social Welfare Advisory Board  
Orissa, A/64. Nayapalli  
Bhubaneswar-751012.

And

Miss Narmada Bastia      ..      Second Party—Workman  
D/o Shri Markanda Bastia, Tinigharia  
P. O. Nuabazar, Dist. Cuttack.

#### *Appearances :*

For the First Party—Management      ..      Shri P. Prakash

For the Second Party—Workman herself      ..      Miss N. Bastia

## AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the matter in dispute to this Court in the Labour & Employment Department memo No. 11676(5)-L.E., dated the 15th September 1997 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :

“Whether the action of the management of State Social Welfare Advisory Board, Orissa, Bhubaneswar in terminating the services of Miss Narmada Bastia, Junior Assistant with effect from the 12th May 1995, A. N. is legal and/or justified ? If not, to what relief she is entitled ?”

3. By way of this reference workman Miss Narmada Bastia has challenged the legality and justifiability of the action of the management of State Social Welfare Advisory Board, Orissa, Bhubaneswar (in short the management) in terminating her services with effect from the 12th May 1995.

The facts of the case in brief as narrated in the statement of claim tend to reveal that the workman was appointed temporarily on *ad hoc* basis as Jr. Assistant in the office of the State Social Advisory Board, Orissa, Bhubaneswar for a period of 44 days vide Office Order No. 2740, dated the 10th April 1992 by the Chairperson of the management which period was extended from time to time with short breaks and the last order of appointment was issued vide Office Order No. 2626, dated the 17th April 1995. According to the workman on being so appointed she first joined her duty in the establishment of the management on the 23rd April 1992 and continued to work till the date of her termination on the 12th May 1995. It is categorically averred in the statement of claim that although she had rendered continuous uninterrupted service since the date of her joining till the date of her termination with much sincerity, devotion and to the utmost satisfaction of the authorities but the management without any rhyme or reason illegally terminated her from service with effect from the 12th May 1995 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). All the efforts for her re-engagement went in vain and finding no other way out she approached the Hon'ble High Court of Orissa, Cuttack in O. J. C. No. 5481 of 1995. The same was disposed of on the 5th September 1995. While disposing of the writ application the Hon'ble High Court directed the management to consider her representation within two months from the date of receipt of the order. Pursuant to such direction, the Secretary of the Management intimated her that no post of Jr. Assistant was lying vacant and when vacancy would arise her case will be considered. But instead of considering her grievances the management engaged other fresh persons temporarily on *ad hoc* basis for a period of 44 days and they are continuing as such till date. After such termination she approached the labour machinery but to no effect. The conciliation proceeding initiated by the District Labour Officer (Khurda), Bhubaneswar ended in failure and the matter was referred to this Court by the Government in the Labour & Employment Department for adjudication. While seeking industrial adjudication the workman has now prayed for her reinstatement in service with back wages along with other service benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman *inter alia* contended that the State Social Welfare Advisory Board, Orissa, Bhubaneswar is neither an industry as defined under Section 2(j) of the Act

nor the second party is a workman under the purview of Section 2(s) of the Act. While admitting the engagement of the workman vide Office Order No. 2740, dated the 10th April 1992 with effect from the 23rd April 1992 on *ad hoc* basis for a period of 44 days, the management has categorically averred that the period of service of the workman was extended from time to time till the 12th May 1995 when her services were terminated. According to the management the workman was appointed temporarily on *ad hoc* basis for a specific period. The last order of appointment was issued to her vide Office Order No. 2626, dated the 17th April 1995. Thereafter no further extension was given to her and therefore, her services were automatically ceased and she is no more entitled to be reinstated in service with back wages as claimed. The further case of the management is that the Standing Committee recommended for appointment of more Junior Assistants temporarily to facilitate the work yet it was solely for temporary purpose till regular appointment were made. It is admitted by the management that pursuant to the direction of the Hon'ble Court on the 5th September 1995 in O. J. C. No. 5481 of 1995, the workman was duly intimated to the effect that her case will be considered when regular appointment will be made and till date no regular appointments have been made to fill up any post on permanent basis. According to the management, since the service of the workman was temporary and when she was appointed on *ad hoc* basis for a specific period and above all when no further extension was given to her, she is not entitled to be reinstated in service with back wages. On the above backgrounds, the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed :—

### ISSUES

- (i) “Whether the action of the management of State Social Welfare Advisory Board, Orissa, Bhubaneswar in terminating the services of Miss Narmada Bastia, Junior Assistant with effect from the 12th May 1995 is legal and/or justified ?
- (ii) If not, to what relief she is entitled ?”

6. The workman in support of her case has examined herself as W. W. 1 and has relied upon the xerox copies of the Office Orders of different dates relating to her appointment marked as Exts. 1 to 1/v (21 sheets) and the termination order, dated the 12th May 1995 marked as Ext. 2, respectively. On the other hand, the management has examined as many as seven witnesses in this case as M. Ws. 1 to 7 but has not relied upon any document in support of its case.

### FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

The perusal of the evidence of the workman clearly emerges that she joined in the establishment of the management as Jr. Assistant with effect from the 23rd April 1992 temporarily on *ad hoc* basis for a period of 44 days. She continued to work till the 12th May 1995 as per the appointment orders issued to her by the management vide Ext. 1 series. On the 12th May 1995 her services were terminated vide Ext. 2 without giving any notice or

notice pay and retrenchment compensation for which she has now claimed for her reinstatement in service with back wages. Nothing material and substantial has been elicited by the management during cross-examination so as to discard or disbelieve her evidence. On a careful scrutiny of her evidence, I also find no cogent reason to disbelieve her evidence and the documents relied upon by her in the present case.

8. The management, on the other hand, has examined as many as seven witnesses in support of its case. The perusal of the evidence already led by the management through M. Ws. 1 to 7 clearly reveals that the workman was appointed temporarily on *ad hoc* basis as Jr. Assistant in the establishment of the management for a period of 44 days having one day break. All the above witnesses have clearly and categorically stated that on being so appointed the workman had rendered continuous service with effect from the 23rd April 1992 till the date of her termination on 12th May 1995. It is admitted by the management through the above witnesses that in order to avoid further complicacy and regularisation in service, the management used to give the break period for one or two days. M. W. 7 has categorically stated in his evidence that the workman was working even also in the break period and still there is vacancy in the post of Jr. Assistant. It is also admitted by M. W. 7 that the management while terminating her services had not given any notice or notice pay and retrenchment compensation. All the witnesses have also clearly admitted in their cross-examination that the workman had rendered continuous service since the date of her joining till the date of her termination. After carefully examining the evidence already led by the management, absolutely there is no reason to disbelieve their evidence.

9. The claim of the workman before this Court is that she had rendered continuous service since the 23rd April 1992 till the date of her termination on the 12th May 1995. But the management without any rhyme or reason terminated her service without following the mandatory provisions as laid down under Section 25-F of the Act. It is categorically submitted by the workman that she is entitled to be reinstated in service with back wages since the provisions of Section 25-F of the Act was not complied within the case of her termination. The fact of continuous service having been rendered by the workman in the establishment of the management has not been challenged and disputed by the management in the present case. It has been elicited from the evidence led by the management that the workman had rendered continuous service with effect from the 23rd April 1992 till the date of her termination on the 12th May 1995, and the management while terminating her services had not given any notice or notice pay and retrenchment compensation to her which, in my opinion, was in complete violation of the mandatory provisions of Section 25-F of the Act. The perusal of the Office Orders relating to the appointment of the workman vide Ext. 1 series clearly emerges that the workman had rendered continuous uninterrupted service with effect from the date of her joining till the date of termination on the 12th May 1995. It is clearly evident that the workman was undoubtedly working in the establishment of the management continuously and to avail the legal complication, the management exercised its power under a colourable pretext, making the appointment of the workman for a period of 44 days. The further perusal of the office Orders clearly reveals that the management allowed the workman to work in its establishment retrospectively from a particular date which is nothing but unfair labour practice and colourable exercise of powers. The evidence led by the parties clearly shows that the workman had worked more than 240 days in a calendar year in terms of the statutory provisions of the Act and therefore, the workman is entitled to the benefits as laid down under Section 25-F of the Act and the management having not complied with the requirements of law of giving notice or notice pay and retrenchment compensation, the termination of the workman, in my opinion,

was illegal and unjustified. It would be most profitable to refer to a decision of our own Hon'ble High Court in the matter of Shyam Sundar Rout and Chandra Sekhar Sahoo *Vrs.* O.S.R.T.C. and other reported in 69 (1990) CLT 357, wherein Their Lordships have clearly held that—

“The settled portion of law is, Section 25-F of the Act being a beneficial legislation, it has to be strictly complied with and is a mandatory precondition. The negative form adopted by the provision, coupled with the use of word ‘until’ which introduces condition indicates that the conditions must be first satisfied before retrenchment can be validly effected. Non-compliance of Section 25-F of the Act renders the order of retrenchment void *ab initio*. Taking into account all provisions of law in A. I. R. 1976 Supreme Court 1111, the State Bank of India *Vrs.* Shri N. Sundara Money. Their Lordships have laid down the dictum that the payment of retrenchment benefits as required under Section 25-F(2) of the Act is mandatory a precondition to the order of retrenchment. In absence of such compliance it has to be held that the workman continued in service though the order of appointment was for a specific period?”

The Hon'ble Apex Court in the matter between Somepat Co-op. Sugar Mills Ltd. and Rakesh Kumar reported in 2006 (108) FLR 592 Supreme Court has clearly held that :

“The respondent had worked continuously between the said period and further admitted that the respondent had worked for more than 240 days in a period of one year prior to respondent's termination. In view of it, there was a clear violation of Section 25-F and we find no error in the direction for reinstatement”.

While considering a similar question regarding non-compliance of Section 25-F of the Act, the Hon'ble Apex Court in catena of decision has consistently taken the view that :

“The provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*.”

In another decision of our Hon'ble High Court in the matter of Chakradhar Tripathy, Petitioner *Vrs.* State of Orissa and others—Opposite parties reported in 1992 Lab. I. C. 1813, Their Lordships have clearly held that :

“The entire purpose and protection of Section 25-F of the Act can be frustrated by manipulation of unscrupulous employers by giving *ad hoc* appointments and extending them with *mala fide* motive ; or by providing suitable stipulation in the contract service, to escape the rigours of Section 25-F of the Act. This would further confer arbitrary powers on the employers which would be destructive of the protection granted by Act to the employees”.

In the present case the condition precedent as prescribed under Section 25-F of the Act has not at all been followed while terminating the services of the workman with effect from the 12th May 1995. Therefore, I am of the considered view that the termination having been made in violation of the mandatory provisions of Section 25-F of the Act is void *ab initio*. On a careful consideration of all the materials available on record, the documents relied upon by the workman and keeping in view the settled position of law. I am led to hold that the action of the management in terminating the services of the workman with effect from the 12th May 1995



is illegal, unjustified and against the mandate of Section 25-F of the Act. In that view of the matter, the workman is entitled to the relief of reinstatement .

10. The management has taken a stand before this Court that since it is a philanthropic and non-profit making organisation, it is not covered by the definition of industry and the second party is not a workman under the purview of the definition of the Act but the stand taken by the management in this regard has not been substantiated during evidence. In such premises the stand taken by the management is without substance.

11. The perusal of the schedule of reference clearly emerges that the termination has been effected from the 12th May 1995. In the mean time more than 10 years have been elapsed. There is no cogent material on record to establish that the workman has been gainfully employed elsewhere with effect from the date of termination. In such circumstances, the workman is entitled to reinstatement but on the facts and circumstances of the present case as the workman had not worked with effect from the date of her termination, she is entitled to compensation towards back wages a lump sum amount of Rs. 5,000 which in my opinion, would meet the ends of justice in the instant case. Both the above issues are answered accordingly.

12. Hence it is ordered.

### ORDER

That the action of the management of State Social Welfare Advisory Board, Orissa, Bhubaneswar in terminating the services of Miss Narmada Bastia, Jr. Assistant with effect from the 12th May 1995, A.N. is neither legal nor justified. The workman is entitled to be reinstated in service with a lump sum compensation of Rs. 5,000 (Rupees five thousand) only in lieu of back wages.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO  
30-3-2006  
Presiding Officer  
Labour Court, Bhubaneswar

P. K. SAHOO  
30-3-2006  
Presiding Officer  
Labour Court, Bhubaneswar

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By order of the Governor  
N. C. RAY  
Under-Secretary to Government